

IN THE HIGH COURT OF BOMBAY AT GOA.

FIRST APPEAL NO.23 OF 2010.

Shri Rajan Banawali,
Son of Shri Vinod Banawali,
Aged 44 years, driver,
Resident of House No.LIG-623,
Maruti Mandir, Housing Board,
Rumdamol, Davorlim,
Margao, Goa.

... Appellant.

V e r s u s

1. Shri Dinesh Shirodkar,
Son of Pandurang Shirodkar,
Major of age,
Resident of 486,
Gogol, Margao.
2. Oriental Insurance Company Ltd.,
2nd floor, David House,
Margao-Goa.
3. Shri Nooruddin Shaikh,
Resident of H. No.2478,
Chandrawada, Fatorda,
Margao-Goa.
4. National Insurance Company Ltd;
2nd floor, Marchon Building,
Varde-Valaulikar Road,
Opp. Lohiya Maidan,
Margao-Goa.

... Respondents.

Mr. D. Pangam, Advocate for the appellant.

Mr. S. Bharne, Advocate for the respondent no.2.

Mr. U. R. Timble, Advocate for the respondent no.4.

Coram:- K. L. WADANE, J.
Reserved on: 19th June, 2015.

Pronounced on:-25th June, 2015.

JUDGMENT

The present appeal is preferred by the appellant dissatisfied with the amount of the compensation granted by the judgment and order dated 22.12.2009 passed by the Presiding Officer, Motor Accident Claims Tribunal for the Taluka of Salcete, at Margao("Presiding Officer" for short) in Claim Petition no.163/2008.

2. Parties shall hereinafter referred to as per their original status in the claim petition.

3. The brief facts of the case may be stated as follows:-

Claimant filed the petition under Section 163-A of the Motor Vehicles Act claiming compensation based on structure formula.

On 29.8.2007, at about 03.30 hours, the claimant was proceeding from Mumbai to Margao. He was driving the vehicle namely Swaraj Mazda bearing no.GA-02-U-8686, owned by Shri Nooruddin Shaikh/respondent no.3. When he reached at Old Goa bypass road, all of a sudden the front right side tyre of the vehicle burst, as a result of which, the claimant lost control over

the vehicle and met with an accident with another vehicle owned and driven by the respondent no.1, i.e. Tata Tipper truck bearing no.GA-02-T-6005.

4. In the accident the claimant sustained grievous injuries,i.e. head injury, liver laceration, cerebral contusion, chest injury and other injuries After the claimant was immediately taken to Goa Medical College Hospital, Bambolim and was discharged on 1.10.2007. He incurred expenditure of about Rs.50,000/- for medical treatment still he is not recovered from the injuries. The right side of the claimant has become numb and he is completely immobilized, being unable to use his right hand and right leg and he is also unable to speak properly and he is is completely bedridden and has no limb movements as such. Due to the accident he was taking physiotherapy. He suffered a lot physically, mentally and economically. As a result, the claimant is permanently disabled and practically he is unable even to move.

5. At the time of the accident vehicle were insured with the respondent nos. 2 and 4 respectively.

6. At the time of accident the claimant was aged about 44 years and earning Rs.3000/- per month.

7. Thus the claimant has claimed total compensation of ₹6,50,000/- on all counts.

8. The respondent nos. 1 and 2 have submitted their written statement and denied almost all the material allegations in the petition. According to these respondents accident occurred due to rash and negligent driving of the claimant himself. Hence claim petition under Section 163-A of the Motor Vehicles Act, 1988 is not maintainable. Respondent no. 4 by way of its written statement has denied all the contents of the petition. It is also contended that the accident occurred due to the negligence of the claimants as well as the respondent no.1. Its liability is strictly limited to the terms and condition of the policy.

9. In the trial Court the claimant has examined in all five witnesses i.e AW1 Smt. Vandana Banawali, his power of attorney and wife to prove the contents of the petition. To prove his 100% disability he examined Dr. Xavier George Kocherry, as AW2, AW3- Smt. Disha Mapari, Investigating Officer, AW4 Shri Allan

Fernandes, Physiotherapist and AW5 Shri Shaikh Noorudin to prove the salary and relied upon the salary certificate Exh. 51. As against this no oral evidence is adduced on behalf of the respondents.

10. I have heard the arguments of Mr. D. Pangam, learned counsel appearing for the claimant, Mr. S. Bharné, learned counsel appearing for the respondent no. 2 and Mr. U. R. Timble learned Counsel appearing for the respondent no.4.

11. Mr. Pangam, learned counsel appearing for the claimant has stated that he is pressing the ground of the appeal only as regards to salary of the claimant therefore, the counsel appearing for the parties have concentrated their arguments only on the aspect of the salary of the claimant as on the date of the accident.

12. Looking to the short and limited controversy, the following point arise for my consideration.

<u>SR. NO.</u>	<u>POINTS FOR DETERMINATION</u>	<u>FINDINGS.</u>
1.	Whether the claimant prove that he was driver by profession and was earning Rs.3000/- per month?	 Affirmative.

2. What Order?

.... Appeal is partly allowed.

13. At the outset, it is material to note that except the salary of the claimant , all other aspects have been undisputed while arguing the appeal on merits. According to Mr. Pangam, learned counsel the salary of the claimant has proved to the extent of ₹3000/- per month and, therefore, the learned Presiding Officer was wrong in holding the earning of the claimant to the extent of ₹ 15,000/- per annum being notional earning of the person who had no earning.

14. By referring to the evidence of AW5 Noorrudin Shaikh, Mr. Pangam, learned counsel appearing for the claimant has argued that the evidence available on record is sufficient to hold that the claimant was earning ₹3,000/- per month.

15. Mr. Pangam, learned counsel in support of his submission has relied upon the observation of the Apex Court in the case reported in *(2013) 10 SCC 695* in the case of *Minu Rout and another Vs. Satya Pradyumna Mohapatra*, in para 20 it has observed thus:-

“The Tribunal ought to have taken the salary of the deceased driver at Rs.6,000/- by taking judicial notice of the fact that the post of a driver is a skilled job. Though the claim of the appellants is Rs.5000/- as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual entitlement of the salary of the deceased should have been taken at Rs.6000/- per month by the Tribunal for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the Appellate Court.

16. I have gone through facts and observations of the above cited case in which it is observed by the Hon'ble Supreme Court that deceased was driver and taking judicial note that post of a driver is a skilled job, the salary of the driver has to be taken to Rs.6,000/- per month.

17. So taking judicial notice, the Apex Court has considered the earning of the driver of the vehicle to the accident to ₹ 6000/-. In the present case, the observations of the above cited case are

applicable to the facts of the present case to some extent because it is brought on record by way of cross-examination that the claimant was a part time driver with the respondent no. 3. Therefore, his earning can be considered to the extent of Rs.3000/- per month. Mr. Pangam, therefore, has rightly argued that the learned Presiding Officer has wrongly determined the earning of the claimant to the extent of ₹15,000/- per annum, because notional income of the person has to be taken into account, when the claimant had no earning. Here, in the present case, there is no question of taking notional income because considering the evidence available on record coupled with the observation of the case cited supra, I am of the opinion that the claimant has proved his income at least to the extent of ₹3,000/- per month.

18. The claimant is permanently disabled to the extent of 100% and it has been proved by the evidence of Dr. George.

19. In such circumstances, the view taken by the learned Presiding Officer appears to be incorrect. Therefore, by taking note of the fact that the claimant was earning Rs.3,000/- per month, the judgment and award dated 22.02.2009 passed by the

learned Presiding Officer in Claim Petition No. 163/2008 needs to be modified to that extent. The claimant was about 43 to 44 years old at the time of the accident and as per the table at Serial no.1 of the Second Schedule to M. V. Act, the multiplier to be taken for the age of the victim above 40 years, but not exceeding 45 years, is 15.

20. Looking to the appropriate multiplier, I am of the opinion that the appropriate multiplier to be adopted is 15. Hence, taking monthly earning of Rs.3000 X 12 X 15, the claimant is entitled on account of loss of future earning to ₹5,40,000/-. Rest of the compensation as follows awarded by the learned Presiding Officer is confirmed :-

1. ₹ 47,942.98 towards medical expenses.
2. ₹ 5000/- towards pain and suffering.
3. ₹ 36,000/- towards loss of income for actual disablement not exceeding 52 weeks.

21. Hence, the claimant is entitled to total compensation of ₹ 6,28,942.98/- which is rounded up to ₹6,29,000/- with 9% p.a. interest from the date of the petition till its realisation. Accordingly, the judgment and award stands modified.

22. Hence, I pass the following order:-

ORDER

- i. The appeal is partly allowed.
- ii. The claimant is entitled to receive the total compensation of ₹6,29,000/-. The respondents no.1 and 2, jointly and severally, shall pay 50% along with interest at the rate of 9% per annum and the respondents no.3 and 4, jointly and severally, shall pay the remaining 50% along with interest at the rate of 9% per annum, both from the date of the claim petition till the date of payment of entire amount.

K. L. Wadane, J.

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